

CURTIS J. BUSBY  
Nevada Bar No. 6581  
**BOWMAN AND BROOKE LLP**  
2901 North Central Avenue, Suite 1600  
Phoenix, Arizona 85012  
(602) 643-2300 (Telephone)  
(602) 248-0947 (Facsimile)  
curtis.busby@bowmanandbrooke.com

ROBERT A. NERSESIAN  
Nevada Bar No. 2762  
**NERSESIAN & SANKIEWICZ**  
528 S. Eighth Street  
Las Vegas, Nevada 89101  
(702) 385-5454 (Telephone)  
vegaslegal@aol.com

Attorneys for Defendant Caterpillar Inc.

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

ARLA BREE SMITH, individually,

Plaintiff,

v.

RICHARD DANIEL WHELDEN,  
individually; CATERPILLAR INC.; DOE  
INDIVIDUALS 1-20, inclusive; and ROE  
CORPORATIONS 1-20, inclusive,

Defendants.

Case No.

**DEFENDANT CATERPILLAR INC.'S  
NOTICE OF REMOVAL TO FEDERAL  
COURT**

Defendant Caterpillar Inc. ("Caterpillar"), hereby submits this Notice of Removal pursuant to the provisions of 28 U.S.C. §§ 1332, 1441, and 1446. The grounds for removal are as follows:

**BACKGROUND**

1. Plaintiff filed this action on September 16, 2020, in the District Court of Clark County, Nevada, styled Arla Bree Smith, individually, Plaintiff, v. Richard Daniel Whelden, individually, Caterpillar Inc., Doe Individuals 1-20, inclusive, and Roe Corporations 1-20, inclusive, Defendants, Case No. A-20-821308-C. See Summons and Complaint, attached hereto as Exhibit A.

2. The Summons and Complaint were served on Caterpillar on October 6, 2020.  
3. Caterpillar has not answered Plaintiff's Complaint.  
4. Defendant Whelden was served with the Summons and Complaint on October 10, 2020.  
5. The Summons and Complaint against Caterpillar is attached as Exhibit A.  
6. The Summons and Complaint against Defendant, Wheldon, is attached as Exhibit B.  
7. Exhibits A and B constitute all process, pleadings, and orders served upon such defendants.  
8. Defendant Whelden has not answered Plaintiff's Complaint.  
9. Defendant Whelden consents to removal.  
10. There are no other defendants. Removal is therefore proper pursuant to 28 U.S.C. § 1446.

**COMPLETE DIVERSITY**

11. Plaintiff is a resident of Clark County, Nevada. Ex. A ¶ 1.  
12. Plaintiff admits Caterpillar is a foreign corporation. Ex. A ¶ 3.  
13. Whelden is a resident of the State of Arizona. Ex. A ¶ 2.  
14. There are no other defendants.  
15. Complete diversity exists among the parties for this Court to exercise diversity subject matter jurisdiction over this matter. 28 U.S.C. § 1332(a)(1).

**AMOUNT IN CONTROVERSY**

16. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

17. Whether the amount in controversy requirement is satisfied is determined by reference to the economic benefit plaintiff is trying to protect. *See Buckeye Recyclers v. CHEP USA*, 228 F. Supp. 2d 818 (S.D. Ohio 2002).

18. Here, plaintiff allegedly sustained injuries to “her head, neck, back, bodily limbs,

organs, and systems [from the incident,] all or some of which conditions may be permanent and disabling in nature. . . .” Ex. A ¶ 12. Upon information and belief, plaintiff also sustained injury to her lumbar spine. Additionally, plaintiff alleges that her care and treatment are "continuing and shall continue into the future at a presently unascertainable amount,” Ex. A ¶ 13, which Caterpillar is informed and believes will be provided, at least in part, by an orthopedic surgeon with whom plaintiff is currently treating. Thus, plaintiff seeks her past and future medical expenses allegedly incurred as a result of the incident. Ex. A ¶¶ 12–13, Prayer for Relief.

19. Upon information and belief, plaintiff has not yet gathered all medical bills regarding her past medical treatment. Moreover, plaintiff has not quantified the future medical expenses that she will allegedly incur. *See* Ex. A ¶ 14. It follows that, based upon plaintiff’s alleged medical damages alone, the amount in controversy in this matter is substantially higher than \$75,000 because the claim is based upon incomplete medical billing records and plaintiff seeks “unascertainable” future medical expenses in this lawsuit.

20. In addition to past and future medical expenses, plaintiff also seeks to recover for general damages, lost wages, reasonable attorneys' fees and costs incurred. Ex. A at 6, ¶ 4.

21. Thus, it is facially apparent from the Complaint that the amount in controversy exceeds \$75,000.00.

### **TIMELY FILED**

22. This action first became removable on October 6, 2020, when Caterpillar was served a copy of Plaintiff’s Complaint. Because this Notice of Removal is filed within thirty (30) days after Caterpillar’s receipt of plaintiff’s Complaint, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

23. Because this Notice of Removal is filed within one-year of September 16, 2020, the date of the commencement of this action, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

### **REMOVAL JURISDICTION**

24. This Court has removal jurisdiction over this action pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.





**CERTIFICATE OF SERVICE**

I hereby certify that on 26th day of October, 2020, I electronically filed the foregoing:  
**DEFENDANT CATERPILLAR INC.'S NOTICE OF REMOVAL TO FEDERAL COURT** with the clerk of this Court, using the CM/ECF System.

Garnet E. Beal, Esq.  
Nevada Bar No.: 12693  
**DIMOPOULOS INJURY LAW**  
6671 S. Las Vegas Blvd., Suite 275  
Las Vegas, NV 89119  
O: (702) 800-6000  
F: (702) 224-2114  
gb@stevedimopoulos.com

*Attorneys for Plaintiff*

/s/Jeanette Felix  
An employee of Bowman and Brooke LLP

# **EXHIBIT A**

SUMM

**District Court**  
**CLARK COUNTY, NEVADA**

ARLA BREE SMITH, individually,

Plaintiff,

vs.

RICHARD DANIEL WHELDEN, individually;  
CATERPILLAR, INC.; DOE INDIVIDUALS 1-20, inclusive;  
and ROE CORPORATIONS 1-20, inclusive,

Defendants.

CASE NO.: A-20-821308-C  
DEPT NO.: 23

**SUMMONS TO**  
**CATERPILLAR, INC.**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.**

**TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

**CATERPILLAR, INC.**

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:
  - (a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
  - (b) Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint

Submitted by:

/s/ Garnet E. Beal

GARNET E. BEAL, ESQ.  
Nevada Bar No.: 12693  
DIMOPOULOS INJURY LAW  
6830 S. Rainbow Blvd., Suite 200  
Las Vegas, NV 89118  
O: (702) 800-6000  
*Attorneys for Plaintiff*

STEVEN D. GRIERSON  
CLERK OF COURT


By:

*Robyn Rodriguez*  
DEPUTY CLERK  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155  
Robyn Rodriguez

10/5/2020

Date

Electronically Filed  
9/16/2020 2:37 PM  
Steven D. Grierson  
CLERK OF THE COURT



**COMP**  
GARNET E. BEAL, ESQ.  
Nevada Bar No.: 12693  
DIMOPOULOS INJURY LAW  
6671 S. Las Vegas Blvd., Suite 275  
Las Vegas, NV 89119  
O: (702) 800-6000  
F: (702) 224-2114  
[gb@stevedimopoulos.com](mailto:gb@stevedimopoulos.com)  
*Attorneys for Plaintiff*

CASE NO: A-20-821308-C  
Department 23

DISTRICT COURT  
CLARK COUNTY, NEVADA

ARLA BREE SMITH, individually,  
  
Plaintiff,

CASE NO.:  
DEPT NO.:

vs.

RICHARD DANIEL WHELDEN, individually;  
CATERPILLAR, INC.; DOE INDIVIDUALS 1-20,  
inclusive; and ROE CORPORATIONS 1-20,  
inclusive,

**COMPLAINT**

Defendants.

Plaintiff Arla Bree Smith, by and through her counsel, GARNET E. BEAL, ESQ. of the DIMOPOULOS INJURY LAW, and for her Complaint against the Defendants, and each of them alleges as follows:

**GENERAL ALLEGATIONS**

1. At all times relevant herein, Plaintiff Arla Bree Smith ("Plaintiff") is and was a resident of Clark County, State of Nevada.
2. Upon information and belief at all times relevant herein Defendant Richard Daniel Whelden ("Defendant") is and was a resident of the State of Arizona.
3. Upon information and belief and at all times relevant herein, Defendant CATERPILLAR, INC. ("CATERPILLAR") is and was at all times relevant herein, a foreign corporation authorized to conduct business and doing business in the State of Nevada.

DIMOPOULOS  
INJURY LAW



9. As Plaintiff's vehicle stopped, Defendant, who was traveling immediately behind Plaintiff, failed to stop for traffic, failed to use due care and collided with the rear of Plaintiff's vehicle, thereby causing injuries and damages to Plaintiff.

10. On or about March 6, 2020, the Defendant had a duty to operate his vehicle in a

1 careful and prudent manner.

2 11. Defendant breached this duty when he operated his vehicle in a negligent, careless  
3 and reckless manner when he failed to pay full attention to driving, failed to use due care and  
4 rear-ended Plaintiff's vehicle, thereby causing damages and injuries to Plaintiff.

5 12. By reason of the premises and as a direct and proximate result thereof, Plaintiff  
6 sustained injuries to her head, neck, back, bodily limbs, organs, and systems all or some of which  
7 conditions may be permanent and disabling in nature, all to her general damage in a sum in  
8 excess of \$15,000.

9 13. By reasons of the premises and as a direct and proximate result of the  
10 aforementioned, Plaintiff was required to and did receive medical and other treatment for her  
11 injuries received in an expense all to her damage in a sum in excess of \$15,000. Said services,  
12 care, and treatment are continuing and shall continue in the future, at a presently  
13 unascertainable amount, and Plaintiff will amend her Complaint accordingly when the same shall  
14 be ascertained.

15 14. Prior to the injuries complained herein, Plaintiff was an able-bodied person readily  
16 and gainfully employed and physically capable of engaging in all other activities for which she was  
17 otherwise suited.

18 15. By reason of the premises and as a direct and proximate result of the Defendants'  
19 negligence, Plaintiff has been required to and did lose time from her employment, continues to  
20 and shall continue to be limited in each of her activities and occupations which have caused and  
21 shall continue to cause Plaintiff's loss of earnings and earning capacity to Plaintiff's damage in a  
22 presently unascertainable amount. In this regard, Plaintiff asks leave of this Court to insert said  
23 amount when the same shall be fully ascertained.

24 16. Plaintiff has been compelled to retain the services of an attorney to prosecute this  
25 action and, therefore, entitled to reasonable attorney's fees and costs incurred herein.

26 ...

27 ...

28 ...



**SECOND CLAIM FOR RELIEF**  
**(NEGLIGENCE PER SE-DEFENDANT WHELDEN)**

Plaintiffs repeats and realleges the allegations contained in Paragraphs 1 through 16, as fully set forth herein.

17. Defendant had a duty to operate his vehicle in accordance with the traffic laws of the State of Nevada.

18. Defendant violated the laws of the State of Nevada by operating his vehicle in a negligent, careless and reckless manner, by failing to pay full attention to driving and thus, rear-ended Plaintiff's vehicle, thereby causing damages and injuries to Plaintiff. Thus, Defendant is negligent per se.

19. By reason of the premises and as a direct and proximate result thereof, Plaintiff sustained injuries to her head, neck, back, bodily limbs, organs, and systems all or some of which conditions may be permanent and disabling in nature, all to her general damage in a sum in excess of \$15,000.

20. By reasons of the premises and as a direct and proximate result of the aforementioned, Plaintiff was required to and did receive medical and other treatment for her injuries received in an expense all to her damage in a sum in excess of \$15,000. Said services, care, and treatment are continuing and shall continue in the future, at a presently unascertainable amount, and Plaintiff will amend her Complaint accordingly when the same shall be ascertained.

21. Prior to the injuries complained herein, Plaintiff was an able-bodied person readily and gainfully employed and physically capable of engaging in all other activities for which she was otherwise suited.

**THIRD CLAIM FOR RELIEF**  
**(NEGLIGENCE ENTRUSTMENT-DEFENDANT CATERPILLAR)**

Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 21, as fully set forth herein.

22. CATERPILLAR entrusted said vehicle to Defendant when they allowed him to drive said vehicle.





1           23.     CATERPILLAR knew or should have known that the Defendant lacked the skill and  
2 necessary training in operating a motor vehicle entrusted to her. As such, CATERPILLAR knew or  
3 should have known of the significant hazards arising from the operating of said motor vehicle on  
4 public streets.

5           24.     CATERPILLAR knew or should have known that the entrustment of said vehicle to  
6 Defendant would inflict damages to person and property using public streets, including Plaintiff.

7           25.     CATERPILLAR had a duty to only trust said vehicle to qualified and competent  
8 drivers.

9           26.     CATERPILLAR breached this duty when they entrusted the vehicle to Defendant.

10          27.     By reason of the premises and as a direct and proximate result thereof, Plaintiff  
11 sustained injuries to her head, neck, back, bodily limbs, organs, and systems all or some of which  
12 conditions may be permanent and disabling in nature, all to her general damage in a sum in  
13 excess of \$15,000.

14          28.     By reasons of the premises and as a direct and proximate result of the  
15 aforementioned, Plaintiff was required to and did receive medical and other treatment for her  
16 injuries received in an expense all to her damage in a sum in excess of \$15,000. Said services,  
17 care, and treatment are continuing and shall continue in the future, at a presently  
18 unascertainable amount, and Plaintiff will amend her Complaint accordingly when the same shall  
19 be ascertained.

20          29.     Prior to the injuries complained herein, Plaintiff was an able-bodied person readily  
21 and gainfully employed and physically capable of engaging in all other activities for which she was  
22 otherwise suited.

23                   **FOURTH CLAIM FOR RELIEF**  
                  **(RESPONDEAT SUPERIOR-DEFENDANT CATERPILLAR)**

24          Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 29, as if  
25 fully set forth herein.

26          30.     CATERPILLAR entrusted said truck to Defendant in order to generate income and  
27 profits.

28          31.     Defendant is and was an employee of CATERPILLAR and under the supervision and



1 control of CATERPILLAR at the time of the accident described herein.

2 32. At all times relevant herein, Defendant was acting within the scope and course of  
3 his employment with CATERPILLAR at the time of the accident described herein.

4 33. By reason of the premises and as a direct and proximate result thereof, Plaintiff  
5 sustained injuries to her head, neck, back, bodily limbs, organs, and systems all or some of which  
6 conditions may be permanent and disabling in nature, all to her general damage in a sum in  
7 excess of \$15,000.

8 34. By reasons of the premises and as a direct and proximate result of the  
9 aforementioned, Plaintiff was required to and did receive medical and other treatment for her  
10 injuries received in an expense all to her damage in a sum in excess of \$15,000. Said services,  
11 care, and treatment are continuing and shall continue in the future, at a presently  
12 unascertainable amount, and Plaintiff will amend her Complaint accordingly when the same shall  
13 be ascertained.

14 35. Prior to the injuries complained herein, Plaintiff was an able-bodied person readily  
15 and gainfully employed and physically capable of engaging in all other activities for which she  
16 were otherwise suited.

17 WHEREFORE, Plaintiff Arla Smith prays for judgment on all claims for relief as follows:

- 18 1. General damages in excess of \$15,000.00.  
19 2. Special damages in excess of \$15,000.00.  
20 3. Lost wages in an amount yet to be determined.  
21 4. Costs of suit incurred including reasonable attorneys' fees.  
22 5. For such other relief as the Court deems just and proper.

23 DATED THIS 16<sup>th</sup> day of September, 2020.

24 **DIMOPOULOS INJURY LAW**

25 */s/ Garnet E. Beal*

26 GARNET E. BEAL, ESQ.  
27 Nevada Bar No. 12693  
28 6830 South Las Vegas Boulevard, #275  
Las Vegas, NV 89119



# **EXHIBIT B**

SUMM

**District Court**  
**CLARK COUNTY, NEVADA**

ARLA BREE SMITH, individually,

Plaintiff,

vs.

RICHARD DANIEL WHELDEN, individually;  
CATERPILLAR, INC.; DOE INDIVIDUALS 1-20, inclusive;  
and ROE CORPORATIONS 1-20, inclusive,

Defendants.

CASE NO.: A-20-821308-C  
DEPT NO.: 23

**SUMMONS TO**  
**RICHARD DANIEL WHELDEN**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD  
UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.**

**TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

**RICHARD DANIEL WHELDEN**

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:
  - (a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
  - (b) Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint

Submitted by:

/s/ Garnet E. Beal

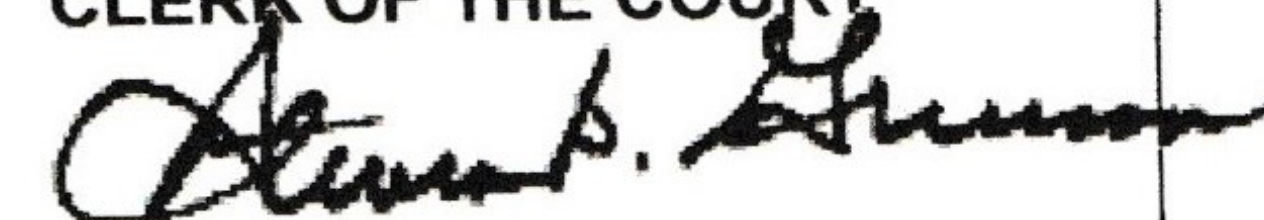
GARNET E. BEAL, ESQ.  
Nevada Bar No.: 12693  
DIMOPOULOS INJURY LAW  
6830 S. Rainbow Blvd., Suite 200  
Las Vegas, NV 89118  
O: (702) 800-6000  
*Attorneys for Plaintiff*

**STEVEN D. GRIERSON**  
**CLERK OF COURT**

By: Robyn Rodriguez 10/5/2020  
Date  
**DEPUTY CLERK**  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155  
Robyn Rodriguez



Electronically Filed  
9/16/2020 2:37 PM  
Steven D. Grierson  
CLERK OF THE COURT



CASE NO: A-20-821308-C  
Department 23

1 **COMP**  
2 GARNET E. BEAL, ESQ.  
3 Nevada Bar No.: 12693  
4 DIMOPOULOS INJURY LAW  
5 6671 S. Las Vegas Blvd., Suite 275  
6 Las Vegas, NV 89119  
7 O: (702) 800-6000  
8 F: (702) 224-2114

Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ARLA BREE SMITH, individually,  
Plaintiff,

CASE NO.:  
DEPT NO.:

vs.

RICHARD DANIEL WHELDEN, individually;  
CATERPILLAR, INC.; DOE INDIVIDUALS 1-20,  
inclusive; and ROE CORPORATIONS 1-20,  
inclusive,

Defendants.

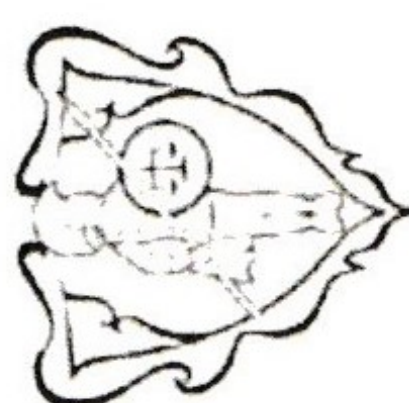
**COMPLAINT**

Plaintiff Arla Bree Smith, by and through her counsel, GARNET E. BEAL, ESQ. of the DIMOPOULOS INJURY LAW, and for her Complaint against the Defendants, and each of them alleges as follows:

**GENERAL ALLEGATIONS**

1. At all times relevant herein, Plaintiff Arla Bree Smith ("Plaintiff") is and was a resident of Clark County, State of Nevada.
2. Upon information and belief at all times relevant herein Defendant Richard Daniel Whelden ("Defendant") is and was a resident of the State of Arizona.
3. Upon information and belief and at all times relevant herein, Defendant CATERPILLAR, INC. ("CATERPILLAR") is and was at all times relevant herein, a foreign corporation authorized to conduct business and doing business in the State of Nevada.

DIMOPOULOS  
INJURY LAW





9. As Plaintiff's vehicle stopped, Defendant, who was traveling immediately behind Plaintiff, failed to stop for traffic, failed to use due care and collided with the rear of Plaintiff's vehicle, thereby causing injuries and damages to Plaintiff.

10. On or about March 6, 2020, the Defendant had a duty to operate his vehicle in a

SUMM

**District Court**  
**CLARK COUNTY, NEVADA**

ARLA BREE SMITH, individually,

Plaintiff,

vs.

RICHARD DANIEL WHELDEN, individually;  
CATERPILLAR, INC.; DOE INDIVIDUALS 1-20, inclusive;  
and ROE CORPORATIONS 1-20, inclusive,

Defendants.

CASE NO.: A-20-821308-C  
DEPT NO.: 23

**SUMMONS TO**  
**RICHARD DANIEL WHELDEN**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD  
UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.**

**TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

**RICHARD DANIEL WHELDEN**

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:
  - (a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
  - (b) Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint

Submitted by:

/s/ Garnet E. Beal

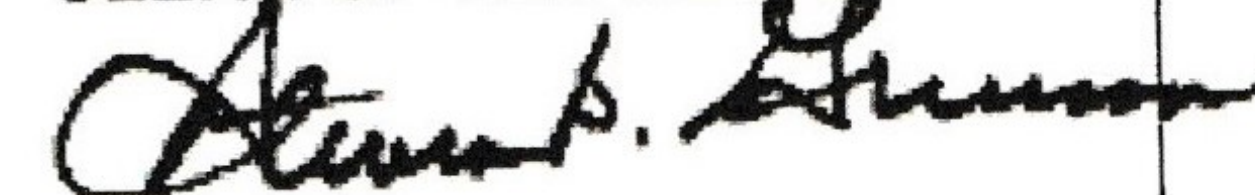
GARNET E. BEAL, ESQ.  
Nevada Bar No.: 12693  
DIMOPOULOS INJURY LAW  
6830 S. Rainbow Blvd., Suite 200  
Las Vegas, NV 89118  
O: (702) 800-6000  
*Attorneys for Plaintiff*

**STEVEN D. GRIERSON**  
**CLERK OF COURT**

By: Robyn Rodriguez 10/5/2020  
DEPUTY CLERK Date  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155  
Robyn Rodriguez



Electronically Filed  
9/16/2020 2:37 PM  
Steven D. Grierson  
CLERK OF THE COURT



CASE NO: A-20-821308-C  
Department 23

1 **COMP**  
2 GARNET E. BEAL, ESQ.  
3 Nevada Bar No.: 12693  
4 DIMOPOULOS INJURY LAW  
5 6671 S. Las Vegas Blvd., Suite 275  
6 Las Vegas, NV 89119  
7 O: (702) 800-6000  
8 F: (702) 224-2114

Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ARLA BREE SMITH, individually,  
  
Plaintiff,

CASE NO.:  
DEPT NO.:

vs.

RICHARD DANIEL WHELDEN, individually;  
CATERPILLAR, INC.; DOE INDIVIDUALS 1-20,  
inclusive; and ROE CORPORATIONS 1-20,  
inclusive,

Defendants.

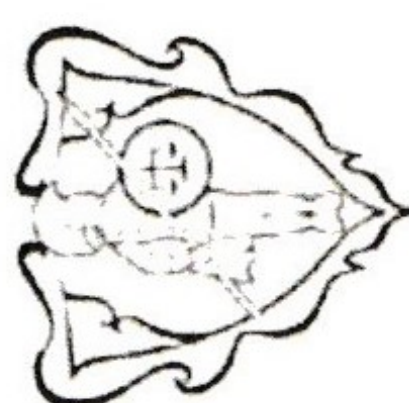
**COMPLAINT**

Plaintiff Arla Bree Smith, by and through her counsel, GARNET E. BEAL, ESQ. of the DIMOPOULOS INJURY LAW, and for her Complaint against the Defendants, and each of them alleges as follows:

**GENERAL ALLEGATIONS**

1. At all times relevant herein, Plaintiff Arla Bree Smith ("Plaintiff") is and was a resident of Clark County, State of Nevada.
2. Upon information and belief at all times relevant herein Defendant Richard Daniel Whelden ("Defendant") is and was a resident of the State of Arizona.
3. Upon information and belief and at all times relevant herein, Defendant CATERPILLAR, INC. ("CATERPILLAR") is and was at all times relevant herein, a foreign corporation authorized to conduct business and doing business in the State of Nevada.

DIMOPOULOS  
INJURY LAW





9. As Plaintiff's vehicle stopped, Defendant, who was traveling immediately behind Plaintiff, failed to stop for traffic, failed to use due care and collided with the rear of Plaintiff's vehicle, thereby causing injuries and damages to Plaintiff.

10. On or about March 6, 2020, the Defendant had a duty to operate his vehicle in a



1 careful and prudent manner.

2 11. Defendant breached this duty when he operated his vehicle in a negligent, careless  
3 and reckless manner when he failed to pay full attention to driving, failed to use due care and  
4 rear-ended Plaintiff's vehicle, thereby causing damages and injuries to Plaintiff.

5 12. By reason of the premises and as a direct and proximate result thereof, Plaintiff  
6 sustained injuries to her head, neck, back, bodily limbs, organs, and systems all or some of which  
7 conditions may be permanent and disabling in nature, all to her general damage in a sum in  
8 excess of \$15,000.

9 13. By reasons of the premises and as a direct and proximate result of the  
10 aforementioned, Plaintiff was required to and did receive medical and other treatment for her  
11 injuries received in an expense all to her damage in a sum in excess of \$15,000. Said services,  
12 care, and treatment are continuing and shall continue in the future, at a presently  
13 unascertainable amount, and Plaintiff will amend her Complaint accordingly when the same shall  
14 be ascertained.

15 14. Prior to the injuries complained herein, Plaintiff was an able-bodied person readily  
16 and gainfully employed and physically capable of engaging in all other activities for which she was  
17 otherwise suited.

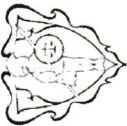
18 15. By reason of the premises and as a direct and proximate result of the Defendants'  
19 negligence, Plaintiff has been required to and did lose time from her employment, continues to  
20 and shall continue to be limited in each of her activities and occupations which have caused and  
21 shall continue to cause Plaintiff's loss of earnings and earning capacity to Plaintiff's damage in a  
22 presently unascertainable amount. In this regard, Plaintiff asks leave of this Court to insert said  
23 amount when the same shall be fully ascertained.

24 16. Plaintiff has been compelled to retain the services of an attorney to prosecute this  
25 action and, therefore, entitled to reasonable attorney's fees and costs incurred herein.

26 ...

27 ...

28 ...



**SECOND CLAIM FOR RELIEF**  
**(NEGLIGENCE PER SE-DEFENDANT WHELDEN)**

Plaintiffs repeats and realleges the allegations contained in Paragraphs 1 through 16, as fully set forth herein.

17. Defendant had a duty to operate his vehicle in accordance with the traffic laws of the State of Nevada.

18. Defendant violated the laws of the State of Nevada by operating his vehicle in a negligent, careless and reckless manner, by failing to pay full attention to driving and thus, rear-ended Plaintiff's vehicle, thereby causing damages and injuries to Plaintiff. Thus, Defendant is negligent per se.

19. By reason of the premises and as a direct and proximate result thereof, Plaintiff sustained injuries to her head, neck, back, bodily limbs, organs, and systems all or some of which conditions may be permanent and disabling in nature, all to her general damage in a sum in excess of \$15,000.

20. By reasons of the premises and as a direct and proximate result of the aforementioned, Plaintiff was required to and did receive medical and other treatment for her injuries received in an expense all to her damage in a sum in excess of \$15,000. Said services, care, and treatment are continuing and shall continue in the future, at a presently unascertainable amount, and Plaintiff will amend her Complaint accordingly when the same shall be ascertained.

21. Prior to the injuries complained herein, Plaintiff was an able-bodied person readily and gainfully employed and physically capable of engaging in all other activities for which she was otherwise suited.

**THIRD CLAIM FOR RELIEF**  
**(NEGLIGENCE ENTRUSTMENT-DEFENDANT CATERPILLAR)**

Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 21, as fully set forth herein.

22. CATERPILLAR entrusted said vehicle to Defendant when they allowed him to drive said vehicle.





1           23. CATERPILLAR knew or should have known that the Defendant lacked the skill and  
2 necessary training in operating a motor vehicle entrusted to her. As such, CATERPILLAR knew or  
3 should have known of the significant hazards arising from the operating of said motor vehicle on  
4 public streets.

5           24. CATERPILLAR knew or should have known that the entrustment of said vehicle to  
6 Defendant would inflict damages to person and property using public streets, including Plaintiff.

7           25. CATERPILLAR had a duty to only trust said vehicle to qualified and competent  
8 drivers.

9           26. CATERPILLAR breached this duty when they entrusted the vehicle to Defendant.

10          27. By reason of the premises and as a direct and proximate result thereof, Plaintiff  
11 sustained injuries to her head, neck, back, bodily limbs, organs, and systems all or some of which  
12 conditions may be permanent and disabling in nature, all to her general damage in a sum in  
13 excess of \$15,000.

14          28. By reasons of the premises and as a direct and proximate result of the  
15 aforementioned, Plaintiff was required to and did receive medical and other treatment for her  
16 injuries received in an expense all to her damage in a sum in excess of \$15,000. Said services,  
17 care, and treatment are continuing and shall continue in the future, at a presently  
18 unascertainable amount, and Plaintiff will amend her Complaint accordingly when the same shall  
19 be ascertained.

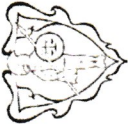
20          29. Prior to the injuries complained herein, Plaintiff was an able-bodied person readily  
21 and gainfully employed and physically capable of engaging in all other activities for which she was  
22 otherwise suited.

23                           **FOURTH CLAIM FOR RELIEF**  
24                           **(RESPONDEAT SUPERIOR-DEFENDANT CATERPILLAR)**

25          Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 29, as if  
26 fully set forth herein.

27          30. CATERPILLAR entrusted said truck to Defendant in order to generate income and  
28 profits.

31. Defendant is and was an employee of CATERPILLAR and under the supervision and





1 control of CATERPILLAR at the time of the accident described herein.

2 32. At all times relevant herein, Defendant was acting within the scope and course of  
3 his employment with CATERPILLAR at the time of the accident described herein.

4 33. By reason of the premises and as a direct and proximate result thereof, Plaintiff  
5 sustained injuries to her head, neck, back, bodily limbs, organs, and systems all or some of which  
6 conditions may be permanent and disabling in nature, all to her general damage in a sum in  
7 excess of \$15,000.

8 34. By reasons of the premises and as a direct and proximate result of the  
9 aforementioned, Plaintiff was required to and did receive medical and other treatment for her  
10 injuries received in an expense all to her damage in a sum in excess of \$15,000. Said services,  
11 care, and treatment are continuing and shall continue in the future, at a presently  
12 unascertainable amount, and Plaintiff will amend her Complaint accordingly when the same shall  
13 be ascertained.

14 35. Prior to the injuries complained herein, Plaintiff was an able-bodied person readily  
15 and gainfully employed and physically capable of engaging in all other activities for which she  
16 were otherwise suited.

17 WHEREFORE, Plaintiff Arla Smith prays for judgment on all claims for relief as follows:

- 18 1. General damages in excess of \$15,000.00.
- 19 2. Special damages in excess of \$15,000.00.
- 20 3. Lost wages in an amount yet to be determined.
- 21 4. Costs of suit incurred including reasonable attorneys' fees.
- 22 5. For such other relief as the Court deems just and proper.

23 DATED THIS 16<sup>th</sup> day of September, 2020.

**DIMOPOULOS INJURY LAW**

/s/ Garnet E. Beal

25 GARNET E. BEAL, ESQ.  
26 Nevada Bar No. 12693  
27 6830 South Las Vegas Boulevard, #275  
28 Las Vegas, NV 89119

